

**No. PD-0553-20**  
In the  
Texas Court of Criminal Appeals  
At Austin

RECEIVED  
COURT OF CRIMINAL APPEALS  
3/19/2021  
DEANA WILLIAMSON, CLERK

—◆—  
**No. 01-18-00897-CR**  
In the  
Court of Appeals for the  
First District of Texas  
At Houston

—◆—  
**No. 1532340**  
In the 178th District Court  
Of Harris County, Texas

—◆—  
**JAMAILE JOHNSON**  
*Appellant*  
V.  
**THE STATE OF TEXAS**  
*Appellee*

—◆—  
**STATE’S REPLY BRIEF**  
—◆—

**KIM OGG**  
District Attorney  
Harris County, Texas

**PATRICIA McLEAN**  
Assistant District Attorney  
Harris County, Texas  
500 Jefferson  
Houston, Texas 77002  
Tel.: 713-274-5826  
FAX No.: 832-927-0180  
*Counsel for the State of Texas*

## **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	2
INDEX OF AUTHORITIES .....	3
REPLY TO APPELLANT’S BRIEF ON DISCRETIONARY REVIEW .....	4
I. Appellant claims erroneously that his mental-health history is relevant to rebut the required <i>mens rea</i> . ....	4
II. Appellant’s reliance on <i>Ruffin</i> and <i>Jackson</i> is misplaced. ....	5
CONCLUSION .....	7
CERTIFICATE OF SERVICE .....	8
CERTIFICATE OF COMPLIANCE .....	8

## **INDEX OF AUTHORITIES**

### **CASES**

<i>Ex parte Chandler</i> , 182 S.W.3d 350 (Tex. Crim. App. 2005).....	6
<i>Hammock v. State</i> , 46 S.W.3d 889 (Tex. Crim. App. 2001).....	4
<i>Jackson v. State</i> , 160 S.W.3d 568 (Tex. Crim. App. 2005).....	5, 6
<i>Johnson v. State</i> , 606 S.W.3d 386 (Tex. App.—Houston [1st Dist.] May 28, 2020, pet. granted)....	5
<i>Ruffin v. State</i> , 270 S.W.3d 586 (Tex. Crim. App. 2008).....	5, 6

### **RULES**

Tex. R. App. P. 38.1.....	4
Tex. R. App. P. 38.2.....	4
Tex. R. App. P. 70.3.....	4
Tex. R. Evid. 105.....	4

**TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:**

**REPLY TO APPELLANT’S BRIEF ON DISCRETIONARY REVIEW**

**I. Appellant claims erroneously that his mental-health history is relevant to rebut the required *mens rea*.**

Appellant argues that his medical records are relevant to negate *mens rea* because they reference schizophrenia. (Appellant’s Br. – 14-15) He also contends that the records are relevant because evidence of his “long [mental-health] history coupled with the testimony of appellant and his family would be compelling evidence that [he] was in the throes of an episode at the time he took the truck.” (Appellant’s Br. – 15)<sup>1</sup> These arguments mistake the *existence* of mental-health history for its *relevance* in negating the alleged culpable mental state.

The mere fact that appellant has documented mental-health history does not amount to a showing that, at the time of the offense, his mental state was such that he could have believed erroneously that someone else’s property belonged to him. Further, the medical records do not explain or provide context for the defense-witness testimony about appellant’s behavior or his mental state at the time of the

---

<sup>1</sup> Appellant claims that his medical records would not have been admitted in their entirety at trial. (Appellant’s Br. – 15-18) But the record does not support his claim. Defense counsel offered appellant’s “medical records” without limitation. (RRIII – 62-64) *See* Tex. R. Evid. 105(a); *cf.* *Hammock v. State*, 46 S.W.3d 889, 895 (Tex. Crim. App. 2001) (where defendant fails to request a limiting instruction when evidence is admitted, the evidence is admitted for all purposes). Appellant speculates from a silent record when he suggests that certain portions of the medical records would have been challenged after defense counsel offered them without limitation. Notably, he does not claim that defense counsel erred by offering the medical records in their entirety. (Appellant’s Br. – 16) *See* Tex. R. App. P. 38.1(i), 38.2, 70.3.

offense. *See Ruffin v. State*, 270 S.W.3d 586, 597 (Tex. Crim. App. 2008) (lay witness testimony concerning defendant’s mental breakdown and delusions was never put into a mental-disease context or its psychological significance explained, but expert evidence explaining the defendant’s mental disease and when and how paranoid delusions may distort a person’s perceptions was admissible as it related to whether the defendant intended to shoot at police officers); *cf. Johnson v. State*, 606 S.W.3d 386, 410 (Tex. App.—Houston [1st Dist.] May 28, 2020, pet. granted) (Goodman, J., dissenting) (recognizing that the medical records state various diagnoses, often without elaboration, and questioning how jurors would know what such diagnoses entail or how they potentially impacted appellant’s ability to form the specific intent required to commit theft).

## **II. Appellant’s reliance on *Ruffin* and *Jackson* is misplaced.**

Appellant relies on *Ruffin* and *Jackson* to support his claim that his mental-health history is admissible. (Appellant’s Br. – 14-15) But those cases make clear that mental-disease evidence must truly negate the culpability element in order to be admissible. *See Ruffin*, 270 S.W.3d at 596 (expert mental-disease testimony may be excluded if it does not truly negate the required *mens rea*); *Jackson v. State*, 160 S.W.3d 568, 574 (Tex. Crim. App. 2005) (relevant evidence may be presented which the jury may consider to negate the *mens rea* element). Moreover, the circumstances in *Ruffin* and *Jackson* are inapplicable here.

*Ruffin* involved proffered testimony from a psychologist who opined, among other things, that on the date of the offense the defendant was delusional, paranoid, and suffering from psychotic symptoms such as hearing or seeing things that did not exist. *Ruffin*, 270 S.W.3d at 590. This Court found the testimony clearly relevant to the issue of whether the defendant intended to shoot at police officers. *Id.* at 596. In *Jackson*, the mental-illness evidence did not negate *mens rea* at all. *Jackson*, 160 S.W.3d at 572. Instead, the evidence provided an excuse or motive for the crime. *Id.* To the extent that the defendant was prevented from arguing that the jury should find that he did not have the capacity to act intentionally and knowingly, this Court made clear that presenting evidence of mental illness does not then allow the defense to argue that the defendant does not have the capacity to intentionally or knowingly perform an act. *Id.* at 574-75. Thus, *Ruffin* and *Jackson* do not support appellant's argument.

Appellant's medical records are irrelevant because they do not negate the required *mens rea*. Therefore, even if this Court determines that the records can be considered in evaluating his ineffective-assistance claim, appellant cannot show that defense counsel performed deficiently by failing to get inadmissible records admitted at trial. *See Ex parte Chandler*, 182 S.W.3d 350, 356 (Tex. Crim. App. 2005) (reasonably competent counsel need not perform a useless or futile act).

## **CONCLUSION**

It is respectfully requested that the lower appellate court's majority decision be reversed.

**KIM OGG**  
District Attorney  
Harris County, Texas

/s/ Patricia McLean  
**PATRICIA MCLEAN**  
Assistant District Attorney  
Harris County, Texas  
500 Jefferson  
Houston, Texas 77002  
(713) 274-5826  
TBC No. 24081687  
mclean\_patricia@dao.hctx.net

### **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing instrument has been sent to the following email address via e-filing:

Windi Pastorini  
Attorney for Appellant  
windi@pastorinilaw.com  
winlaw@swbell.net

Stacey Soule  
State Prosecuting Attorney  
information@spa.texas.gov

/s/ Patricia McLean  
**PATRICIA McLEAN**  
Assistant District Attorney  
Harris County, Texas  
500 Jefferson  
Houston, Texas 77002  
(713) 274-5826  
TBC No. 24081687

### **CERTIFICATE OF COMPLIANCE**

The undersigned attorney certifies that this computer-generated document has a word count of 786 words, based upon the representation provided by the word processing program that was used to create the document.

/s/ Patricia McLean  
**PATRICIA McLEAN**  
Assistant District Attorney  
Harris County, Texas  
500 Jefferson  
Houston, Texas 77002  
(713) 274-5826  
TBC No. 24081687

Date: 3/18/2021



### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Patricia McLean  
Bar No. 24081687  
McLean\_Patricia@dao.hctx.net  
Envelope ID: 51613846  
Status as of 3/19/2021 8:19 AM CST

Associated Case Party: State of Texas

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Stacey Soule	24031632	information@spa.texas.gov	3/18/2021 3:40:48 PM	SENT

Associated Case Party: Jamaile Johnson

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Winifred Pastorini	962500	Windi@pastorinilaw.com	3/18/2021 3:40:48 PM	SENT
Windi Pastorini		winlaw@swbell.net	3/18/2021 3:40:48 PM	SENT